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11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 In re:

15 **PG&E CORPORATION,**

16 **- and -**

17 **PACIFIC GAS AND ELECTRIC**
18 **COMPANY,**
19 **Debtors.**

- 20 ☐ Affects PG&E Corporation
21 ☐ Affects Pacific Gas and Electric Company
22 ☒ Affects both Debtors

23 ** All papers shall be filed in the Lead Case,*
24 *No. 19-30088 (DM).*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**FIRE VICTIM TRUSTEE'S OBJECTION
TO LETTER REQUEST OF BRETT
BLANK AND BRANDON BLANK TO
DEEM LATE PROOFS OF CLAIM
TIMELY FOR THE PURPOSE OF
ADMINISTRATION BY THE FIRE
VICTIM TRUST**

[Relates to Docket Numbers 13034 and 13082]

Hearing Date: November 30, 2022

Hearing Time: 10:00 a.m.

Place: Hearing will be conducted telephonically or
by video

1 Cathy Yanni, in her capacity as the Trustee (the “**Trustee**”) of the Fire Victim Trust, by and
2 through her undersigned counsel, hereby submits this Objection to the letter filed by Brett Blank
3 and Brandon Blank on October 3, 2022 [Dkt. 13034] (the “**Blank Letter**”) and the supplement to
4 the Blank Letter filed on October 14, 2022 [Dkt. 13082]. In support of this Objection, the Trustee
5 respectfully states as follows:

6 **PRELIMINARY STATEMENT**

7 The Fire Victim Trust understands that the Fires caused by PG&E in 2015, 2017 and 2108
8 made it hard for survivors to undertake many everyday tasks due displacement, trauma and other
9 factors. The Trust has been as understanding and flexible as possible with respect to late claims
10 and, when motions have been filed to consider late filed claims “timely” for the purpose of
11 allowing those claims to be administered by the Trust, the Fire Victim Trustee has authorized many
12 stipulations with the Debtors to have the Court enter orders deeming these claims timely and has
13 not opposed many other late claim motions. Nevertheless, the Trustee must balance a desire to
14 ensure as many Fire Victims as possible are compensated injuries arising from the Fires against the
15 fact that tens of thousands of Fire Victims – many of whom suffered horrific losses – were able to
16 timely file proofs of claim in these cases. The Trustee also recognizes there is a fundamental
17 difference between claimants who file motions to have long-filed late proofs of claims deemed
18 timely after receiving notice from the Trust of this necessity and those who file motions shortly
19 after late proofs of claim are filed.

20 Of the 1,015 late claim motions filed since the December 31, 2019 extended bar date for
21 non-governmental Fire Claimants, 921 (more than 90 %) have been filed in the last six months.
22 One hundred fifty-five (155) of those late claim motions were filed in August alone, prompting the
23 Trustee to state in several filings with this Court that she would have to discontinue the Trust’s
24 liberal non-opposition policy with respect to late claim motions filed after September 30, 2022.
25 The Trust’s policy of non-opposition was not a guarantee that every late claim motion would be
26 unopposed, but rather a preference for non-opposition before October 1 and for stricter review
27 thereafter.

28 ///

1 Unfortunately, this statement was interpreted by some as a guarantee that late claim motions
2 filed prior to October 1, 2022 would not be opposed by the Trust,¹ prompting a mind-boggling 672
3 late claim motions to be filed on September 30, 2022 alone. To put these numbers in perspective,
4 in 2020, which included the months immediately after both the extended bar date and the effective
5 date of the Trust (both events that could be expected to prompt the filing of late claim motions), the
6 total number of late claim motions filed alleging Fire Victim Claims was 55. In 2021, the total
7 number was only 22. The Trust had no reason to anticipate or prepare for the recent flood of new
8 claims, most of which (including the Blank proofs of claim) were only recently filed. All of these
9 new, unanticipated claims will need to be reviewed, evaluated and determined before the Trust can
10 make final payments to any of the tens of thousands of Fire Victims who have complied with all of
11 the Trust deadlines and must wait to learn how much of their approved claims can be paid.

12 **RELEVANT BACKGROUND**

13 1. On January 29, 2019, PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and
14 Electric Company (“**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the
15 “**Debtors**”), commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code
16 (the “**Chapter 11 Cases**”). The Reorganized Debtors filed the Chapter 11 Cases to address the
17 billions of dollars of damage and loss relating to the devastating 2015, 2017 and 2018 California
18 fires and to provide compensation to wildfire victims.

19 2. On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an
20 Official Committee of Unsecured Creditors. On February 15, 2019, the U.S. Trustee appointed an
21 Official Committee of Tort Claimants (the “**TCC**”).

22 3. On March 14, 2019, the Debtors filed their schedules of assets and liabilities. By
23 Order dated July 1, 2019, the Court established October 21, 2019 (the “**Bar Date**”) as the last date
24 to file proofs of claim in the Chapter 11 Cases [Docket No. 2806] (the “**Bar Date Order**”). By
25

26 ¹ The Trust has been advised of several social media posts encouraging people to file late claims by stating that the
27 Trust was paying “significant amounts” for certain claims that did not require any economic damages, such as a
28 posting on nextdoor.com [<https://nextdoor.com/city/santa-rosa--ca/>] informing Tubbs evacuees that “the Fire Victims
Trust is compensating claimants for emotional distress for having to evacuate from our homes during the 2017 fires.”

1 Order dated November 11, 2019, the Court extended the Bar Date to December 31, 2019 (the
2 “**Extended Bar Date**”) for unfiled, non-governmental Fire Claimants [Docket No. 4672] (the
3 “**Extended Fire Victims Bar Date Order**”)

4 4. The Extended Fire Victims Bar Date Order was entered in response to a motion filed
5 by the TCC. The TCC argued that the Bar Date “should be extended for the fire victims on the
6 ground that evidence filed herewith establishes that a large number of victims are not filing claims
7 in these chapter 11 cases because they are impaired from filing. Their impairments include
8 emotional distress, suffering from trauma caused by the wildfire that destroyed everything they
9 own, confusion caused by the trauma, a lack of awareness of the fire claims bar date, and a belief
10 that a claimant needs to be insured to file a claim.” [Docket No. 4293 at 5:2-8]. The Court has
11 already considered and addressed the adequacy of notice to Fire Victims. As a result of the Court’s
12 careful consideration of this issue and the thoughtful manner in which the Debtors redoubled their
13 efforts to reach additional Fire Victims, many thousands of claimants, some of whom suffered
14 unfathomable losses, were able to file their claims in a timely manner.

15 **OBJECTION**

16 5. While courts have decided that there is no harm to *the debtor* in allowing late claims
17 to be considered when a solvent debtor is paying all claims in full in a bankruptcy case, in this case
18 Fire Victim Claims will likely not be paid in full because there is not enough money in the Trust to
19 pay in full the Fire Victim Claims already channeled to the Trust. All Fire Victim Claims that have
20 been determined by the Trust so far have taken into consideration the number of Claims that were
21 left to be paid *as of the date those determinations were made*. If number of Claims channeled to
22 the Trust continue to increase, the Trust may not be able to increase the pro rata percentage beyond
23 the current 45%, making it objectively detrimental to tens of thousands of claimants who filed their
24 claims before December 31, 2019, and who submitted their Claims Questionnaires to the Trust by
25 February 26, 2020, to continue to allow late claims like those filed by Brett and Brandon Blank into
26 the Trust. Every late claim accepted by the Trust – even those that are ultimately deemed non-
27 compensable – takes time and money from claimants who have met all deadlines and are waiting
28 for their final payments.

1 6. As the Supreme Court has recognized, Bankruptcy Rule 9006(b)(1) permits court
2 bankruptcy courts to accept proofs of claim filed after the bar date where appropriate in cases of
3 excusable neglect due to inadvertence, mistake, carelessness or circumstances beyond the
4 claimant's control. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S.
5 Ct. 1489, 123 L. Ed. 2d 74 (1993). As the dissent in *Pioneer* recognized, "the statute does not
6 require the court to forgive every omission caused by excusable neglect, but states that the court
7 "may" grant relief "in its discretion." *Id.*, 507 U.S. at 399, 113 S. Ct. at 1500 (emphasis in original).

8 7. The threshold determination to be made under Bankruptcy Rule 9006(b)(1) is
9 whether Brett Blank's and Brandon Blank's failure to file their proofs of claim in this case resulted
10 from excusable neglect. Notably, in *Pioneer*, counsel had filed the claimant's proof of claim a
11 mere 20 days late and the Supreme Court found that the bar date notice in that case contained a
12 "dramatic ambiguity." By contrast, the notice of the Extended Bar Date was the second notice
13 provided to potential Fire Victims and it was carefully crafted to inform that group of the deadline
14 to file any claims arising from a Fire, yet Brett Blank's proof of claim was filed 911 days after the
15 Extended Bar Date and Brandon Blank's proof of claim was filed 910 days after the Extended Bar
16 Date.

17 8. As this Court has recognized, claimants who file late proofs of claim bear "the
18 burden of presenting facts demonstrating excusable neglect." *In re Pacific Gas & Elec. Co.*, 311
19 B.R. 84, 89 (2004) (citing *Key Bar Invs., Inc. v. Cahn (In re Cahn)*, 188 B.R. 627 (9th Cir. BAP
20 1995)).

21 9. The Blank Letter explains that Brett and Brandon Blank would have filed proofs of
22 claim sooner if PG&E or County officials had notified them that they could receive compensation
23 for non-economic damages. The Blank Letter does not claim that they did not have notice of the
24 Extended Bar Date or were unable to file their claims due to circumstances beyond their control.
25 Rather, it asserts that the Debtors should have analyzed potential claims and informed possible Fire
26 Victims that they could receive compensation for such claims.

27 10. In *Pioneer* the Supreme Court applied the majority of what was then the Ninth
28 Circuit test for determining whether a failure to timely file a proof of claim was due to excusable

1 neglect: (1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its
2 impact on efficient court administration; (3) whether the delay was beyond the reasonable control
3 of the person whose duty it was to perform; and (4) whether the creditor acted in good faith. *Id.*,
4 507 U.S. at 395, 113 S. Ct. at 1498.

5 11. The first consideration in determining whether a late claim filing was the result of
6 “excusable neglect” under *Pioneer* is the danger of prejudice to the debtor. This factor is irrelevant
7 in the present case. While it is true that the relief requested in the Motion will not prejudice the
8 *Debtors*, which have already satisfied their funding obligations to the Trust under the Plan, it most
9 certainly prejudices tens of thousands of claimants who timely filed proofs of claim in these cases.

10 12. The Supreme Court recognized that “that the determination is at bottom an equitable
11 one, taking account of all relevant circumstances surrounding the party's omission.” *Id.* The Blank
12 Letter does not address the prejudice to Fire Victims who timely filed their proofs of claim, much
13 less establish a lack of prejudice. Equity does not support the filing of a late claim due because the
14 claimants didn’t know that they could receive compensation for a non-economic claim.

15 13. The second consideration under *Pioneer* is the length of delay and its potential
16 impact on judicial proceedings. Brett Blank’s proof of claim 911 days after the Extended Bar Date
17 and Brandon Blank’s claim was filed 910 days after the Extended Bar Date – both well over two
18 years after the deadline. As noted above, the Trust has a limited fund from which to pay all Fire
19 Victim Claims. As such, the Trust cannot finally determine how much it can pay on account of any
20 Fire Victim Claim until it adjudicates every Fire Victim Claim. The continued addition of claims
21 to the Fire Victim Trust prevents the Trust from allocating its limited funds and further extends the
22 time that claimants who timely filed their Fire Victim Claims must wait for final payments, thus
23 delaying the administration of Fire Victim Claims and prejudicing those who hold timely filed Fire
24 Victim Claims with delay.

25 14. Moreover, the addition of claims such as Brett and Brandon Blank’s claims
26 increases the number of claimants among which the limited funds of the Trust must be divided. In
27 addition, each late claim motion must be reviewed and considered by the Trust, which incurs
28 professional fees. Each late claim motion reduces the funds available to distribute to Fire Victims.

1 The extreme length of Brett and Brandon Blank's delays weighs heavily against deeming claims
2 timely to the detriment of other Fire Victim.

3 15. The third *Pioneer* factor, whether the delay was beyond the late claimant's control,
4 also weighs against granting the relief requested in the Blank Letter. As explained above, Brett and
5 Brandon Blank did not give any reason for their delay that could establish excusable neglect.
6 Rather, the Blank Letter states that the only thing preventing them from filing proofs of claim
7 before the Extended Bar Date was the knowledge that they could receive compensation for their
8 emotional distress claims. Although the Trust does not wish to minimize such claims in any way,
9 not knowing that the Trust would pay damages for such claims is not a sufficient excuse for
10 neglecting to file a proof of claim by the deadline tens of thousands of other claimants with
11 emotional distress claims were able to meet.

12 16. While the Trustee does not believe that either Brett or Brandon Blank lack the good
13 faith that comprises the final consideration listed by the *Pioneer* court, it is clear from the Blank
14 Letter that they were not prevented from filing timely claims by any circumstances, but rather
15 chose not to do so until they learned that they could receive compensation for non-economic
16 damages.

17 17. In addition, as is evidenced by overwhelming number of late claim motions filed
18 within the last month alone, allowing the Blanks' claims to be deemed timely filed would
19 encourage other latecomers to file similar motions. Such a result would be grossly inequitable to
20 those holding timely filed Fire Victim Claims.

21 18. For the foregoing reasons, Brett and Brandon Blank fail to meet the standard for
22 establishing "excusable neglect" for filing their proofs of claim 911 and 910 days, respectively,
23 after the Extended Bar Date. The relief requested in the Blank Letter should be denied.

24
25 *[remainder of page intentionally blank]*
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1 **CONCLUSION**

2 The Trustee respectfully requests that this Court deny the relief requested in the Blank
3 Letter and grant such other and further relief as may be just.

4
5 DATED: October 17, 2022

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6
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